

[REDACTED]  
Internal Revenue Service

District Director

MAY 18 1998  
[REDACTED]

[REDACTED]  
Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:  
[REDACTED]

Telephone Number  
[REDACTED]

Refer Reply to:  
[REDACTED]

Employer Identification Number:  
[REDACTED]

Date:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

*C. Ashley Bullard*  
C. Ashley Bullard  
District Director

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[REDACTED]  
[REDACTED]  
Your organization was formed on [REDACTED] by the adoption of your By-Laws. Your stated purposes in pertinent part are:

"The purpose of these By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of the captioned condominium (the "Condominium") in accordance with [REDACTED] of the [REDACTED] (the "[REDACTED] Act") and the Declaration referred to below."

The Declaration attached to your By-laws, Article 6 Common Elements states, " The common elements of the Condominium (the "Common Elements") consist of the entire Property, Including the Land and all parts of the Building and improvements thereon other than the Units.

Schedule B to the Declaration lists six units which make up your Condominium and lists their % of interest in common elements. Schedule B lists the % of interest in common elements as follows:

Unit 1A [REDACTED]%  
Unit 1B [REDACTED]%  
Unit 2A [REDACTED]%  
Unit 2B [REDACTED]%  
Unit 3A [REDACTED]%  
Unit 3B [REDACTED]%

You indicated in your application for exemption the qualifications necessary for membership is that you must be the owner of one of six condo apartments.

The activities of your organization consist of operating a condominium association.

You stated in your application for exemption that your organization is a non-profit homeowners' association, your organization does not own any property, conduct any business, employ any persons nor generate any income that does not meet the definition of "exempt function income" under Section 528. You also stated that although your organization qualifies for tax benefits under Section 528, you are filing for federal tax exempt status so that you may qualify for exemption from New York State corporate taxes.

You stated in your response received [REDACTED], that your organization does not own any property and you do not own or maintain roadways, sidewalks, streetlights, parklands, or playgrounds. You also indicated that although your organization does not have any facilities which can be shared with the community you have provided the benefits of a Neighborhood Watch group to your community.

In regards to your neighborhood watch activities your have indicated that on summer nights, your organizations chief accounting officer and her husband sit on their third floor balcony and watch the activities in the neighborhood. You have indicated that your organizations chief



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[REDACTED]  
[REDACTED]  
accounting officer and her husband have phoned the police and reported suspicious activity when observed. You have also indicated that your organization's President's wife is frequently outside the building, sweeping the sidewalk and tidying up the front yard and while outdoors she observes what goes on and keeps an eye on strangers walking in the neighborhood.

You have stated that as of [REDACTED] you have adopted an addition to your By-Laws in the form of Article 14, [REDACTED]  
[REDACTED] Article 14.6 states, "[REDACTED]"  
[REDACTED] shall formally meet on a quarterly basis, with prior notification to all members, for the following purposes:

- a.) discuss any activities reported to the police in the neighborhood;
- b.) identify issues and problems in the neighborhood;
- c.) share important information with one another;
- d.) discuss security measures to protect lives and property; and
- e.) get to know each other and welcome any new members.

You stated your only present and expected future source of financial support is monthly common charges collected from members to pay for maintenance expenses.

Section 6.1 of your By-Laws, Determination of Common Expenses and Fixing of Common Charges states, "Except as otherwise provided herein, all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the Common Elements and Limited Common Elements ("Common Expenses") shall be borne by the Unit Owners."

Section 6.1 of your By-Laws also states, "The board shall from time to time and at least annually prepare a budget to meet common Expenses and shall allocate and assess to the Unit Owners, pro-rata in accordance with their respective Common Interest (except as otherwise provided in the Declaration or these By-Laws), charges ("Common Charges") to meet Common Expenses.

The financial information submitted with your application for exemption listed your organization's total expenses for tax periods [REDACTED] through [REDACTED] as \$[REDACTED]. Your organization's expenses for tax periods [REDACTED] through [REDACTED] were as follows:

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[REDACTED]

Gas/Heat	\$ [REDACTED]
[REDACTED] Water Tax	\$ [REDACTED]
Insurance	\$ [REDACTED]
Electricity	\$ [REDACTED]
Misc. Supplies	\$ [REDACTED]
Maintenance & Repairs	\$ [REDACTED]
Other Taxes & Expenses	\$ [REDACTED]
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Total Expenses	\$ [REDACTED]

Section 501(c)(4) of the Code provides, in part, for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Rev. Rul. 74-99, 1974-1 C.B. 131, held that for a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public; Rev. Rul. 72-102 modified.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members homes in a development is not exempt from tax under section 501(c)(4) of the Code.

Revenue Ruling 74-17, 1974-1 C.B. 130, holds that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code. The Revenue Ruling states, "By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners." The Revenue Ruling concluded, "Since the organization's activities are for the private benefit of its members, it cannot be said to be



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[REDACTED]  
[REDACTED]  
operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code."

In your response received [REDACTED] you have indicated that your organization should be granted exemption under section 501(c)(4) of the Code, since you have provided the benefits of a Neighborhood Watch group to your community.

You are not as described in section 501(c)(4) since you are not operated exclusively for the promotion of social welfare.

You are not as described in section 1.501(c)(4)-1(a)(2)(i) of the Regulations since you are not primarily engaged in promoting in some way the common good and general welfare of the people of the community.

In comparing you to Revenue Ruling 74-99 you do not meet the requirements to qualify for exemption under section 501(c)(4) as a homeowners association. Your organization does not serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. Your organization maintains private property and your common areas are not for the use and enjoyment of the general public.

You are similar to the organization described in Revenue Ruling 69-280 since you maintain private property owned in common by members of your association.

Your organization is similar to the organization described in Revenue Ruling 74-17. Your organization was formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners.

Therefore, you do not qualify for exemption under section 501(c)(4) of the Code.